

## Resources to Assist with Eyewitness ID and Recording Interrogations Reform

The Innocence Project can offer a number of free resources to assist with statewide implementation of eyewitness identification reform and recording of custodial interrogations. The enclosed materials detail these resources, which include:

- I. **Eyewitness ID Training Courses:** The Innocence Project can fund statewide training courses presented by certified eyewitness identification trainer Chief William Brooks of the Norwood, MA Police Department.
- II. **Model Policies on Recording of Interrogations & Eyewitness ID from the International Association of Chiefs of Police (IACP).**
- III. **Eyewitness ID Implementation Toolkit:** The Innocence Project can coordinate and fund the mailing of “toolkits” to agencies to assist with implementation. Materials may include:
  - A policywriting guide that can be used if an agency prefers to write its own eyewitness identification policy with key best practices.
  - A checklist that an administrator can employ to be certain that the “core four” reforms have been followed.
  - A detailed description of the folder shuffle method, which can be employed in instances where blind administration is not feasible.
  - Links to online training videos that can be used to teach officers about best practices.
- IV. **Compliance Surveys:** The Innocence Project can mail surveys to every agency in the state and can assess the results to determine whether reforms have been adopted at law enforcement agencies.

## Eyewitnesses Identification Training Course



“That’s the guy, I think.”

For years, scientists and criminal justice practitioners have known that some eyewitnesses struggle to recognize the face of the stranger they saw for only a few moments. Worse, some believe they recognize him, but are wrong. Today, we know that about 72% of people exonerated by DNA were sent to prison, at least in part, based on a mistaken identification by an eyewitness. Over the past decade, the National Institute for Justice, the Innocence Project and the International Association of Chiefs of Police have called on police departments to modify the procedures they use with eyewitnesses. And now, a report by a committee at the National Academy of Sciences has echoed that call.

William G. Brooks, a Massachusetts police chief and recognized expert on eyewitness identification, will talk about the science behind the reforms, and about ways that police are implementing them across the U.S. Among other topics, his presentation will include:

- Cautions for dispatchers
- Interview techniques
- Instructing witnesses
- Handling multiple witness cases
- Assembling a photo array
- Sequential photo arrays
- Blind administration
- Assessing witness confidence
- Sketches and composites

William G. Brooks is the Chief of the Norwood, Massachusetts Police Department. He was a member of the Supreme Judicial Court’s Study Committee on Eyewitness Identification and is a member of the SJC standing committee. He also served on a committee at the National Academy of Sciences that issued a report on eyewitness identification research. He presents nationally on behalf of the Innocence Project and was the 2012 recipient of the Innocence Network’s Champion of Justice Award. Chief Brooks is a graduate of the FBI National Academy.

# IACP National Law Enforcement Policy Center ELECTRONIC RECORDING OF INTERROGATIONS AND CONFESSIONS

Model Policy

February 2006

## I. PURPOSE

The purpose of this policy is to establish guidelines and procedures for the electronic recording of custodial interrogations and confessions. Reference to interrogations is used solely in this policy for the sake of convenience. The policy and procedures govern both interrogations and confessions.

## II. POLICY

It is the policy of this law enforcement agency to electronically record specific custodial interrogations and confessions in order to provide an evidentiary record of statements made by suspects of major crimes. Such electronic recordings can help protect both the suspect(s) and interviewing officers against potential assertions of police coercion or related interrogation misconduct, and may increase the likelihood of - successful prosecution.

## III. DEFINITIONS

*Major Crimes:* Homicide, sexual assault, armed robbery, and other Part I crimes as defined in the Federal Bureau of Investigation (FBI) Uniform Crime Reports (UCRs), as well as other crimes as may be defined by the department, whether committed by adults or by juveniles who could be charged as adults for such offenses.

*Place of Detention:* A police station, jail, or similar holding facility in which suspects may be detained in connection with criminal charges. A police vehicle used to transport arrestees may be deemed a custodial environment but is not a place of detention as defined in this policy. Nevertheless, during transportation of suspects who meet the requirements for electronic recording, transporting officers shall observe applicable procedures defined in this policy.

*Electronic Recording:* An audio or video recording whether using magnetic tape, digital means, or other recording media.

## IV. PROCEDURES

### A. General Requirements

1. Officers shall electronically record custodial interrogations conducted in a place of detention involving major crimes as defined by this department.
2. Officers are not required to record noncustodial interviews with suspects, witnesses, or victims during the initial interview phase of an investigation but may do so where deemed necessary, in accordance with law and departmental policy.
3. Electronic recording of juveniles shall be conducted if at the time the crime was committed, the juvenile suspect could be charged with a major crime as an adult.
4. If electronic recordings cannot be conducted due to equipment failure, lack of suspect cooperation, or for other reasons deemed pertinent to successful interrogation by the case manager, the basis for such occurrences shall be documented. This includes but is not limited to spontaneous declarations or other statements not elicited by police questioning.
5. Transporting officers need not refrain from questioning a suspect who has indicated a willingness to talk either at the scene or en route to the place of detention. However, officers shall not purposefully

engage in custodial interrogations involving major crimes as defined by this policy in order to avoid this department's requirement for electronic recording.

## B. Recording Protocol

1. Suspects do not have to be informed that they are being recorded unless required by law.
2. The office of the prosecutor, the investigative case manager, or other authorized department official may direct that specific interrogations be recorded that do not meet the criteria of major crimes as defined by departmental policy.
3. The primary interrogator shall, where possible, obtain a signed waiver from the suspect before beginning interrogation. If the suspect elects not to be recorded or refuses to engage in the interrogation, the suspect's rejection shall be recorded when reasonably possible.
4. Interrogations and confessions shall be recorded in their entirety starting with the interrogator's entrance into the interview room and concluding upon departure of the interrogator and suspect.
5. When commencing the recording, the primary interrogator shall ensure that voice identification is made of officers, suspect, and any others present, and that the date, time, and location of the interrogation is verbally recorded. When beginning a new recording, the interviewer shall announce the date and time that the interrogation is being resumed.
6. An authorized member of the department shall be assigned to monitor recording time to ensure the recording does not run out.

Each recording shall include the following:

- a. Declaration of the time the recording began.
  - b. Declaration of the start of the interrogation.
  - c. Concurrence by the suspect that the interrogation has begun.
  - d. Administration of *Miranda* warnings, even if the recording is a follow up to a prior interview or the suspect has been previously *Mirandized*.
  - e. Notation of the time the interrogation ends.
7. Any lapse in the recording for comfort breaks or other reasons shall be accounted for on the recording. As an alternative, during a short recess, the recording may continue without interruption.
  8. Recording attorney-client conversations is prohibited where an expectation of privacy would reasonably exist.
  9. At the conclusion of the interrogation, the interrogator shall state that the interrogation is concluded and note the date and time of termination. The recording shall continue until all parties have left the interrogation room.
  10. Recordings of interviews are considered evidence and shall be handled as such. In addition, the following shall apply:
    - a. Unused recording media shall always be used for interrogations.
    - b. Both the original and copies of all recording media shall be protected from re-recording.
    - c. Only one interrogation shall be recorded on each recording media.
    - d. Before submitting the original recording to a secure evidence storage area a copy of the recording shall be made. Copies shall be maintained in the investigative unit.
    - e. The identifying information items supplied on the recording label shall be completed and the recording marked either as an *original* or a *copy*.
    - f. The reporting detective's follow-up report shall note if and how the interview was recorded.
  11. All recordings shall be governed by this department's policy and procedures for the handling and preservation of evidence.
  12. Recordings shall be retained by the department in secure storage for a period of time as defined by state law or the office of the prosecutor.

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Every effort has been made by the IACP National Law Enforcement Policy Center staff and advisory board to ensure that this model policy incorporates the most current information and contemporary professional judgment on this issue. However, law enforcement administrators should be cautioned that no "model" policy can meet all the needs of any given law enforcement agency. Each law enforcement agency operates in a unique environment of federal court rulings, state laws, local ordinances, regulations, judicial and administrative decisions and collective bargaining agreements that must be considered. In addition, the formulation of specific agency policies must take into account local political and community perspectives and customs, prerogatives and demands; often divergent law enforcement strategies and philosophies; and the impact of varied agency resource capabilities, among other factors.

# International Association of Chiefs of Police Eyewitness Identification Model Policy 2006

## EYEWITNESS IDENTIFICATION

# Model Policy

<i>Effective Date</i> <b>September 2010</b>		<i>Number</i>
<i>Subject</i> <b>Eyewitness Identification</b>		
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### I. PURPOSE

It is the purpose of this policy to establish guidelines for eyewitness identifications using showups, photo arrays, and lineups.

### II. POLICY

Eyewitness identification is a frequently used investigative tool. However, erroneous eyewitness identifications have been cited as the most frequent cause of wrongful convictions. As such, officers shall strictly adhere to the procedures set forth herein, in order to maximize the reliability of identifications, minimize erroneous identifications, and gather evidence that conforms with contemporary eyewitness identification protocols.

### III. DEFINITIONS

*Showup:* The presentation of a suspect to an eyewitness in a short time frame following commission of a crime to confirm or eliminate him or her as the perceived perpetrator. Showups, sometimes referred to as field identifications, are conducted in a contemporaneous time frame and setting with the crime.

*Photo Array:* Showing photographs to an eyewitness for the purpose of identifying or eliminating suspects.

*Independent Administrator:* The officer administering a lineup or a photo array who has no knowledge of the suspect's identity.

*Functional Equivalent (FE) Procedures:* Used when an independent administrator is not available, FE procedures permit the investigative officer to conduct a photo array, using procedures that preclude him or her from knowing when the suspect is presented to the witness.

*Lineup:* Live presentation of individuals, before an eyewitness, for the purpose of identifying or eliminating suspects.

*Sequential:* Presentation of photos or individuals in a live lineup to a witness one at a time rather than all at once.

### IV. PROCEDURES

#### A. Showups

The use of showups should be avoided whenever possible in preference for the use of a photo array or a lineup. However, when circumstances require the prompt display of a suspect to a witness, the following guidelines shall be followed to minimize potential suggestiveness.

1. Document the witness's description of the perpetrator prior to conducting the showup.
2. Use showups only when the suspect is detained within a reasonably short time frame following the offense.
3. Do not use single suspect showups if probable cause to arrest the suspect has already been established.
4. Transport the witness to the location of the suspect whenever possible, rather than bringing the suspect to the witness.
5. Do not conduct showups when the suspect(s) are in patrol cars, handcuffed, or physically restrained by police officers, unless necessary due to safety.
6. Do not take suspects to the witness's residence unless it is the scene of the crime.
7. Caution the witness that the person he or she is about to see, may or may not be the perpetrator.
8. Separate witnesses and do not allow communi-

cation between them before or after conducting a showup.

9. If one witness identifies the suspect, use a lineup or photo array for remaining witnesses.
10. Do not present the same suspect to the same witness more than once.
11. Do not require showup suspects to put on clothing worn by, speak words uttered by, or perform other actions of the perpetrator.
12. Officers should scrupulously avoid words or conduct of any type that may suggest to the witness that the individual is or may be the perpetrator.
13. Ask the witness how certain he or she is of any identification that is made of a suspect. Document the exact words used by the victim without prompting the witness to elaborate.
14. Remind the witness not to talk about the showup to other witnesses until police or prosecutors deem it permissible.
15. Videotape the identification process using an in-car camera or other recording device where available.
16. Document the time and location of the showup, the officers present, and the outcome of the procedure.

#### B. Photographic Identifications

##### 1. Creating a Photo Array

- a. The photo array should consist of a minimum of six photographs. Use a minimum of five filler photos together with only one suspect. It is recommended that a filler be used as the lead photo and that two blank photos be introduced following the sixth photo. Number all photos and blanks.
- b. Use contemporary photographs of individuals who are reasonably similar in age, height, weight and general appearance and are of the same sex and race, in accordance with the witness's description of the suspect. Do not mix color and black and white photos; use photos of the same size and basic composition; never mix mug shots with other snapshots; and do not include more than one photo of the same suspect.
- c. Cover any portions of mug shots or other photos that provide identifying information on the subject, and similarly cover other photos used in the array.

##### 2. Conducting the Photo Array

- a. An investigator or officer who is unaware of the identity of the suspect, acting as an independent administrator, shall present the photos. No one who is aware of the suspect's identity may be present during the administration of the photo array.
- b. If an independent administrator is not

available, the investigative officer shall follow FE procedures.

- (1) Place the suspect and filler photos in a folder. Include four blank folders, for a total of ten.
  - (2) Shuffle the folders before giving them to the witness.
  - (3) The officer administering the array should position himself or herself so that he or she cannot see inside the folders as they are viewed by the witness..
- c. Whenever reasonably possible, videotape and audiotape the photo array identification procedure.
  - d. Give the witness a copy of the following instructions prior to presenting the photo array and read the instructions aloud before the identification procedure.

*You will be asked to view a series of photos of individuals.*

*It is just as important to clear innocent persons from suspicion as to identify guilty parties.*

*I don't know whether the person being investigated is included in this series.*

*Individuals present in the series may not appear exactly as they did on the date of the incident because features such as head hair and facial hair are subject to change.*

*You should not feel that you have to make an identification. If you do identify someone, I will ask you to describe in your own words how certain you are.*

*The photos will be shown to you one at a time and are not in any particular order. Take as much time as you need to examine each photo. If you make an identification, I will continue to show you the remaining photos in the series.*

*Regardless of whether you make an identification, we will continue to investigate the incident.*

*Since this is an ongoing investigation, you should not discuss the identification procedures or results.*

- e. Position the photos so that the witness does not know the number of photos that will be shown.
- f. Show the photo array to only one witness at a time; separate witnesses so they will not be aware of the responses of other witnesses.
- g. Avoid multiple identification procedures in which the same witness views the same suspect more than once.
- h. Do not comment on selections or outcomes of the procedures in any way.

- i. Ask the witness to describe his or her certainty about any identification that is made. Document the witness's response.
- j. Ask the witness to complete and sign the sequential photo display form.<sup>1</sup>
- k. Preserve the photo array, together with full information about the identification process, for future reference.

#### C. Lineups

The basic principles for conducting a photo array apply equally to live lineups.

##### 1. Creating the Lineup

- a. Use a minimum of six persons who are reasonably similar in age, height, weight and general appearance and are of the same sex and race.
- b. If there is more than one suspect, include only one in each lineup.

##### 2. Conducting the Lineup

- a. An independent administrator shall conduct the lineup whenever reasonably possible. Other than the suspect's attorney, who should attend the lineup, no one who is aware of the suspect's identity may be present during the administration of the lineup.
- b. If an independent administrator is unavailable, the investigating officer must take all reasonable precautions to avoid giving any unintentional cues to the witness.
- c. Present a copy of the instructions contained in section IV.B.2.d. of this policy to the witness and read them aloud before proceeding with the identification process.
- d. Present each individual one at a time to a single witness. In the case of multiple witnesses, present the lineup to each witness separately.
- e. Whenever possible, preserve the lineup and identification process by videotape and audiotape. If not possible, take and preserve a still photograph of each individual in the lineup and document all persons present during the lineup.
- f. Upon completion of the lineup, ask the witness to sign and date the record of results.

##### 3. The primary investigating officer is responsible for the following:

- a. Scheduling the lineup on a date and at a time that is convenient for all concerned parties, to include the prosecuting attorney, defense counsel, and all witnesses.
- b. Fulfilling the necessary legal requirements for transfer of the subject to the lineup location should he or she be incarcerated at a detention center. The officer shall make arrangements for picking up the prisoner,

to include a timely notice to the detention center concerning the pickup.

- c. Making arrangements to have persons act as fill-ins at the lineup who are of the same race, sex, approximate height, weight, age, and physical appearance and who are similarly clothed.
- d. Avoiding the use of fill-ins who so closely resemble the suspect that a person familiar with the suspect might find it difficult to distinguish the suspect from the fillers.
- e. Creating a consistent appearance between the suspect and the fillers with respect to any unique or unusual feature (e.g., scars, tattoos, facial hair) used to describe the perpetrator by artificially adding or concealing that feature.
- f. Placing suspects in different positions in each lineup, both across cases and with multiple witnesses in the same case.
- g. Ensuring that the prisoner has been informed of his or her right to counsel if formal charges have been made against him or her and that he or she has the opportunity to retain counsel or request that one be provided.
- h. Obtaining a written waiver on the prescribed departmental form should the prisoner waive his or her right to counsel.
- i. Allowing counsel representing the accused sufficient time to confer with his or her client prior to the lineup and to observe the manner in which the lineup is conducted.
- j. Ensuring that all persons in the lineup are numbered consecutively and are referred to only by number.
- k. Ensuring that a complete written record and a videotape recording, if possible, of the lineup proceedings are made and retained.
- l. Ensuring that witnesses are not permitted to see or be shown any photos of the accused immediately prior to the lineup.
- m. Ensuring that only one witness views the lineup at a time and that witnesses are not permitted to speak with one another during lineup proceedings.
- n. Scrupulously avoiding the use of statements, clues, and casual comments or providing unnecessary or irrelevant information that in any manner may influence the witnesses' decision-making process or perception.



# Policywriting Guide for Eyewitness Identification

## I. OVERVIEW

The purpose of this policy writing guide is to provide assistance to those writing departmental policies and procedures regarding eyewitness identification in live lineups or by photographic display. Unquestionably, each local jurisdiction is unique, but the essential elements of this guide can be adapted to local needs and professional best practices. Agency policies should be written within the context of local protocols, organizational culture, and available community resources.

## II. PURPOSE

The overall purpose of this policy and procedure is to offer guidance when conducting eyewitness identification. This policy outlines a set of procedures that have been scientifically proven to enhance the accuracy of witness identifications.

### *Commentary*

Studies of eyewitnesses and human memory have suggested that eyewitness evidence is much like trace evidence left at a crime scene. Like trace evidence, eyewitness memory is an imprint left in the mind of the witness. But also like trace evidence, it is susceptible to contamination if not handled properly. The result can be failure to identify the true perpetrator or erroneous identification of an innocent person.

Over the past 30 years, a large body of peer-reviewed, scientific research and practice has emerged showing that simple systemic changes in administering eyewitness identification procedures can greatly improve the accuracy of those identifications and reduce the risk of misidentifications. These methods represent the best techniques for accurately capturing and preserving eyewitness memories, thereby enhancing the reliability of criminal investigations and prosecutions.

## III. TERMINOLOGY

**Blind administration** is when the law enforcement official who is administering the lineup does not know which photograph or person is the suspect. Similar to scientific procedures, this eliminates any possibility of unintentional cues or suggestiveness.

**Blinded administration/functional equivalent procedure** is a technique used when a blind administrator is not available. The folder shuffle method is a simple technique for blinded administration in which the lineup photographs are placed in folders and shuffled. While the administrator may know the identity of the suspect, he or she is prevented from seeing which photograph is being viewed by the witness at a given time, thus removing the possibility of unintentional cues or suggestiveness.

**Fillers** are the non-suspects used in photographic and live lineup procedures. They should generally match the witness's description of the perpetrator, as opposed to the appearance of the police suspect.

**Sequential presentation** is a display of photographs or persons one at a time.

**Simultaneous presentation** is a display of photographs or persons presented at the same time, either manually constructed or computer generated.

**Showup** is the live presentation of a suspect to an eyewitness shortly after the commission of a crime.

**Witness confidence statement** is a witness's statement about his or her level of certainty in the selection, taken immediately after the identification is made.

## IV. POLICY

The core objectives of this policy are to improve the accuracy of witness identifications to enhance their evidentiary value in investigations and reduce the likelihood of misidentification. The National Academy of Sciences, the International Association of Chiefs of Police, the American Bar Association and the U.S. Department of Justice have recommended a series of eyewitness identification best practices, most prominently among them (asterisked in the following Procedure section):

1. **Blind/blinded administration** in which the officer conducting the lineup does not know the suspect's identity, or if that is impractical, the officer administers the lineup in a way that "blinds" him from seeing which photograph is being viewed by the witness at a given time (e.g. the folder shuffle method). This eliminates the possibility of inadvertent suggestiveness or cues.
2. **Using proper non-suspect fillers** in the lineup that resemble the description of the perpetrator provided by the eyewitness – as opposed to resemblance to the police suspect.
3. **Providing witness instructions** that the perpetrator may or may not be present and that a selection does not have to be made.
4. **Eliciting witness confidence statements** immediately after an identification is made, in which the witness describes, in his/her own words, the level of confidence in the selection made.

## V. PROCEDURES

### A. Photographic Lineup

#### 1. Organizing a Photographic Lineup

- Obtain a thorough suspect description from each witness prior to presenting the photo lineup.
- *\*Select fillers (non-suspects) who generally fit the witness' description of the perpetrator, as opposed to the police suspect. \**
- Include a minimum of five fillers (non-suspect) per identification procedure. Once the photos are selected, mark the back of each photo with numbers.
- Complete uniformity of features is not required. Avoid using fillers who so closely resemble the suspect that a person familiar with the suspect might find it difficult to distinguish the suspect from the fillers.
- Create a consistent appearance between the suspect and fillers with respect to any unique feature (e.g., scars, tattoos) used to describe the perpetrator by using images that cover those characteristics.
- Position the suspect randomly in each lineup, both across cases and with multiple witnesses in the same case.
- When showing a new suspect, avoid reusing fillers in lineups shown to the same witness.
- Ensure that no writings or information concerning previous arrest(s) will be visible to the witness.
- View the array, once completed, to ensure that the suspect does not unduly stand out.

#### 2. Conducting a Photographic Lineup

- *\*A blind administrator who is unaware of the suspect's identity shall conduct the lineup. \** If a blind administrator is not available use a "blinded" administration technique such as the folder shuffle method listed below.
- *\*Prior to a presentation, instruct the witness that the perpetrator may or may not be present in the lineup and that an investigation will continue regardless of whether an identification is made. \**
- Photographs may be presented sequentially (one at a time) or simultaneously (all at once).
- For a sequential presentation, show the photographs to the witness one at a time and ask the witness whether or not he or she recognizes the person. When the witness signals for the next photograph, move the first photograph so that it is out of sight and ask the witness whether he recognizes the next photograph. The procedure should be repeated until the witness has viewed each photograph. The entire photo lineup must be shown to witness even after he/she makes an identification.
- *\*If a witness makes an identification, ask the witness to state in his or her own words the level of certainty in the identification and document the response. \**
- If the witness requests to view the lineup again, he or she may view the lineup one additional time and must be shown the entire lineup. The order of the photographs should be shuffled before the array is shown for the second time.
- If possible, video record (with audio) the presentation.

- Document in writing the photo lineup procedures, including:
  - Identification information.
  - Sources of all photos used.
  - Witness confidence statement.
  - Date and time of the identification procedure.

### 3. Folder Shuffle Method (Blinded Administration)

If a blind administrator is unavailable, a “blinded” technique called the folder shuffle lineup may be used. In this technique the administrator may be aware of the suspect’s identity but is “blinded” or prevented from seeing which photo is being viewed by the witness at a given time, which removes the potential for inadvertent suggestion or cues. The folder shuffle lineup is conducted as follows:

- Use one suspect photograph that resembles the description of the perpetrator provided by the witness, five filler photographs that match the description, and ten folders (four of the folders will not contain any photos and will serve as ‘dummy folders’).
- Affix one filler photo to Folder #1 and number the folder.
- Place the suspect photograph and the other four filler photographs into Folders #2-6 and shuffle the photographs so that the administrator is unaware of which folder the suspect is in, and then number the remaining folders, including Folders #7-10, which will remain empty (this is done so that the witness does not know when he has seen the last photo).
- ***\*Prior to the presentation, instruct the witness that the perpetrator may or may not be present in the lineup and the investigation will continue whether or not an identification is made. \****
- Without looking at the photo in the folder, hand each folder to the witness individually. Each time the witness has viewed a folder, the witness should indicate whether or not this is the person the witness saw and return the photo to the administrator. The order of the photos should be preserved, in a facedown position, in order to document.
- If the witness requests to view the lineup again, he or she may view the lineup one additional time and must be shown the entire lineup. The order of the folders should be shuffled before the array is shown for the second time.
- ***\*If an identification is made, ask the witness to state in his or her own words the level of confidence in the selection made and document the response. \****
- If possible, video record (with audio) the presentation.
- Document in writing the photo lineup procedures, including:
  - Identification information.
  - Order of the folders used in the procedure.
  - Witness confidence statement.
  - Date and time of the identification procedure.

#### Commentary to the Writer

Blind or blinded administration (aka the folder shuffle technique) uses the same principle as scientific experiments to eliminate the potential for suggestiveness or bias. This recommendation does not presume any deliberate impropriety by law enforcement officers; it merely recognizes the potential for unintentional suggestion.

Studies show that telling the witness that the perpetrator may or may not be present in the lineup counteracts the tendency to identify the person who looks the most like the perpetrator and reduces mistaken identification rates.

Research shows that information suggesting to the witness that he or she selected the right person can dramatically, yet artificially, increase confidence in the identification. Therefore, the witness’s level of confidence should be captured at the time the identification is made, before it can be influenced by outside factors.

The National Academy of Sciences eyewitness identification report indicated that more research should be conducted on the issue of sequential vs. simultaneous lineup presentations and recommended that law enforcement continue employing whichever technique is currently used. This guide provides flexibility for agencies to use either method.

## B. Live Lineups

### 1. Organizing a Live Lineup

- Determine when a live lineup is appropriate by considering the availability of witnesses and lookalikes.
- Obtain a thorough suspect description from each witness prior to presenting the live lineup.

- Only include one suspect in each identification procedure.
- ***\*Select non-suspects who generally fit the witness's description of the perpetrator, as opposed to the police suspect.\****
- Include a minimum of four fillers (non-suspects) per identification procedure.
- When conducting more than one lineup due to multiple witnesses, place the suspect in different display positions.
- Avoid reusing non-suspects in lineups shown to the same witness when showing a new suspect.

## 2. Conducting a Live Lineup

- ***\*A blind administrator who is unaware of the suspect's identity shall conduct the lineup.\**** If a blind administrator is not available use a "blinded" administration technique such as the folder shuffle method, which as a practical matter means conducting a photographic instead of live lineup.
- ***\*Prior to a presentation, instruct the witness that the perpetrator may or may not be present in the lineup and that an investigation will continue regardless of whether an identification is made.\****
- Lineup participants may be presented sequentially (one at a time) or simultaneously (all at once).
- For a sequential presentation, begin with all lineup participants out of view of the witnesses. Present each individual to the witness separately, in a previously determined order, removing those previously shown. The entire lineup must be shown to witness even after he/she makes an identification.
- If the witness requests to view the lineup again, he or she may view the lineup one additional time and must be shown the entire lineup.
- ***\*If a witness makes an identification, ask the witness to state in his or her own words the level of certainty in the identification and document the response.\****
- If possible, video record (with audio) the presentation.
- Document in writing the photo lineup procedures, including:
  - Identification information.
  - Names of all persons participating in the lineup.
  - Date and time of the identification procedure.

### Commentary for Writers

Live lineups must be conducted by a blind administrator. If a blind administrator is not available, a "blinded" procedure must be used, which as a practical matter would require a photographic instead of live lineup. If the witness makes an identification, the law enforcement official should present the remaining participants. This helps ensure objectivity and reliability. Any identification actions, for example speaking or moving, must be performed by all participants. Witnesses may view the lineup a second time if they request to do so; however they must be shown the entire lineup again. Witnesses must be aware that the suspect may not be among those in the live lineup and that they should not feel compelled to make an identification.

## C. Showups

- A showup is the presentation of one suspect to a victim or eyewitness within a short timeframe (typically 2 hours) after the commission of a crime.
- Before conducting a showup, consider the length of time since the crime was committed and the proximity of the suspect to the crime scene.
- Consider if a photo lineup can be conducted instead of a showup for increased control and improved logistics.
- Obtain a thorough description of the suspect from each witness prior to the showup.
- Ensure that all law enforcement officials avoid suggestive words or conduct while preparing for the presentation.
- If possible, avoid presenting the suspect in a suggestive manner such as in handcuffs or from the back of a patrol car.
- Transport the witness, not the suspect, when possible.
- Separate witnesses to avoid communication between them.
- Instruct the witness that the person he or she will view may or may not be the perpetrator, and that an investigation will continue whether or not an identification is made.
- ***\*If a witness makes an identification, ask the witness to state in his or her own words the level of certainty in the identification and document the response.\****
- If possible, video record (with audio) the presentation.
- Document in writing the procedure, including:
  - Identification information.
  - Witness confidence statement.

- Date and time of the procedure.

*Commentary for Writers:*

Showups allow law enforcement officials to conduct an immediate eyewitness identification procedure in situations where they have temporarily detained a suspect. Showups are allowed when a limited period of time has elapsed since the crime was committed to eliminate innocent suspects. Although showups can be inherently suggestive, they are intended to minimize the level of governmental intrusion. The suspect should be presented as neutral as possible.

## VI. FORMS

### Eyewitness Identification Form: **Photo Lineup**

Case Number: \_\_\_\_\_

Law Enforcement Official Name: \_\_\_\_\_

Date and Time of Presentation: \_\_\_\_\_

Witness Name: \_\_\_\_\_

#### **INSTRUCTIONS** (*Read by law enforcement official to witness*)

In a moment I'm going to show you a set of photographs. A photograph of the person who is involved in the crime may or may not be among them. You do not have to make an identification and the investigation will continue regardless of whether or not you make a selection.

I must show you the entire set of photographs, even if you make an identification. If you would like to see a photograph again, you are allowed to view the entire lineup once more.

If you pick a photograph, I'm going to ask you to explain why you picked that photograph and to describe how confident you are in your selection. If you do select a photograph, please do not ask me about the person you have selected, as no information can be shared with you at this stage of the investigation.

Do you understand these instructions? (*Circle one*) YES/ NO

#### **WITNESS STATEMENT** (*Written by law enforcement official*)

Witness picked photograph number: \_\_\_\_\_

Witness Statement of Confidence (*In his/her own words*)

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I, \_\_\_\_\_, affirm that I understand the instructions, and that the statement written by the law enforcement official accurately reflects what I said. Finally, I understand that I should not talk to other people about the procedure.

Signature of Witness \_\_\_\_\_

# Eyewitness Identification Form: **Live Lineup**

Case Number: \_\_\_\_\_

Law Enforcement Official Name: \_\_\_\_\_

Date and Time of Presentation: \_\_\_\_\_

Witness Name: \_\_\_\_\_

## **INSTRUCTIONS** (*Read by law enforcement official to witness*)

In a moment I'm going to show you a series of people. The person who is involved in the crime may or may not be among them. You do not have to make an identification and the investigation will continue regardless of whether or not you make a selection.

I must show you the entire set of individuals, even if you make an identification. If you would like to see a person again, you are allowed to view the entire lineup once more.

If you pick an individual, I'm going to ask you to explain why you picked that person and to describe how confident you are in your selection. If you do select an individual, please do not ask me about the person you have selected, as no information can be shared with you at this stage of the investigation.

Do you understand these instructions? (*Circle one*) YES/ NO

## **WITNESS STATEMENT** (*Written by law enforcement official*)

Witness picked lineup participant number: \_\_\_\_\_

Witness Statement of Confidence (*In his/her own words*)

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I, \_\_\_\_\_, affirm that I understand the instructions, and that the statement written by the law enforcement official accurately reflects what I said. Finally, I understand that I should not talk to other people about the procedure.

Signature of Witness \_\_\_\_\_

# Eyewitness Identification Form: **Folder Shuffle Method**

Case Number: \_\_\_\_\_

Law Enforcement Official Name: \_\_\_\_\_

Date and Time of Presentation: \_\_\_\_\_

Witness Name: \_\_\_\_\_

## **INSTRUCTIONS** (*Read by law enforcement official to witness*)

In a moment I'm going to show you a set of folders containing photographs. A photograph of the person who is involved in the crime may or may not be among them. You do not have to make an identification and the investigation will continue regardless of whether or not you make a selection.

I must show you the entire set of folders, even if you make an identification. If you would like to see a photograph again, you are allowed to view the entire lineup once more.

If you pick a photograph, I'm going to ask you to explain why you picked that photograph and to describe how confident you are in your selection. If you do select a photograph, please do not ask me about the person you have selected, as no information can be shared with you at this stage of the investigation.

Do you understand these instructions? (*Circle one*) YES/ NO

## **WITNESS STATEMENT** (*Written by law enforcement official*)

Witness picked photograph number: \_\_\_\_\_

Witness Statement of Confidence (*In his/her own words*)

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I, \_\_\_\_\_, affirm that I understand the instructions, and that the statement written by the law enforcement official accurately reflects what I said. Finally, I understand that I should not talk to other people about the procedure.

Signature of Witness \_\_\_\_\_



## Eyewitness Identification Form: **Showup**

Case Number: \_\_\_\_\_

Law Enforcement Official Name: \_\_\_\_\_

Date and Time of Presentation: \_\_\_\_\_

Witness Name: \_\_\_\_\_

### **INSTRUCTIONS** (*Read by law enforcement official to witness*)

In a moment you will be shown some individuals who may or may not be involved in the crime. You do not have to make an identification and the investigation will continue regardless of whether or not you make a selection.

If you make an identification, I'm going to ask you to explain why you picked that person and to describe how confident you are in your selection. If you make an identification, please do not ask me about the person you have selected, as no information can be shared with you at this stage of the investigation.

Do you understand these instructions? (*Circle one*) YES/ NO

### **WITNESS STATEMENT** (*Written by law enforcement official*)

Did the witness positively identify the person shown? (*Circle one*) YES/NO

Witness Statement of Confidence (*In his/her own words*)

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I, \_\_\_\_\_, affirm that I understand the instructions, and that the statement written by the law enforcement official accurately reflects what I said. Finally, I understand that I should not talk to other people about the procedure.

Signature of Witness \_\_\_\_\_

## Lineup Identification Checklist

☐ **Ensure lineup is conducted with a blind administrator/“blinded” administrator using the folder shuffle method.**

- “Blind” means the administrator does not know the identity of the suspect in the lineup.
- “Blinded” means the administrator may know who the suspect is, but by virtue of the use of procedures and/or technology to accomplish this purpose, does not know which lineup member is being viewed by the eyewitness.

☐ **Provide the following lineup instructions to the witness.**

The perpetrator may or may not be among the persons in the identification procedure. The administrator does not know who the suspect is. You should not feel compelled to make an identification. The investigation will continue whether or not an identification is made.

The procedure requires the administrator to ask you to state, in your own words, how certain you are of any identification. You should not discuss the identification procedure or its results with other eyewitnesses involved in the case and you should not speak with the media.

☐ **Ensure all fillers/non-suspects match the description of the perpetrator provided by the witness.**

- Record the description that the witness gave of the perpetrator. The lineup will be composed of fillers that generally resemble the description of the perpetrator in significant features (i.e., face, weight, build, skin tone, etc.), including any unique or unusual features (i.e., scar, tattoo, etc.).

☐ **Record the witness’ confidence statement.**

- If the witness makes an identification, the administrator should document below in the witness’ own words, how confident he/she is that the individual identified is the perpetrator.

## The Folder Shuffle Method (aka “Blinded” Lineup Administration)

To enhance the accuracy of any eyewitness identification procedure, the officer administering a lineup should not know which lineup member is the police suspect. Eyewitness identification procedures should therefore be conducted by a non-investigating, or ‘blind,’ administrator.

Understandably, small police departments with limited officer manpower – or larger departments with officers conducting identifications in the field - may have difficulties using a blind administrator who does not know the suspect’s identity. A simple solution is to “blind” the administrator using the folder shuffle system, in which lineup photographs are placed in folders, shuffled, and handed to the witness one at a time. The administrator may know the suspect’s identity, but is prevented from seeing which photograph is being viewed at a given time, which eliminates any possibility of suggestiveness.

1. Use one suspect photograph that resembles the description of the perpetrator provided by the witness, five filler photographs that match the description but do not cause the suspect photograph to unduly stand out, and ten folders [four of the folders will not contain any photos and will serve as ‘dummy folders’].
2. Place one filler photo in Folder #1 and number the folder.
3. The individual administering the lineup should place the suspect photograph and the other four filler photographs into Folders #2-6 and shuffle the photographs so that he is unaware of which folder the suspect is in, and then number the remaining folders, including Folders #7-10, which will remain empty. [This is done so that the witness does not know when he has seen the last photo].
4. The administrator should provide instructions to the witness. The witness should be informed that the perpetrator may or may not be contained in the photos he is about to see and that the administrator does not know which folder contains the suspect.
5. Without looking at the photo in the folder, the administrator is to hand each folder to the witness individually. Each time the witness has viewed a folder, the witness should indicate whether or not this is the person the witness saw and the degree of confidence in this identification, and return the photo to the administrator. The order of the photos should be preserved, in a facedown position, in order to document in Step 6.
6. The administrator should then document and record the results of the procedure. This should include: the date, time and location of the lineup procedure; the name of the administrator; the names of all of the individuals present during the lineup; the number of photos shown; copies of the photographs themselves; the order in which the folders were presented; the sources of all of the photos that were used; a statement of confidence *in the witness’s own words* as to the certainty of his identification, taken immediately upon reaction to viewing; and any additional information the administrator deems pertinent to the procedure.

\* The information described above was informed by “Eyewitness Identification Procedure Recommendations” put forth by a Wisconsin Task Force as well as existing research on the folder shuffle.

## Links to Eyewitness ID Training Videos

### I. Roll Call Videos

Episode 1: General

Overview: [https://www.youtube.com/watch?v=kYZ8fNzQQMA&list=PLQVOkAHaXhnyB7iEpd\\_x8S3JMoA0ML5b9&index=1](https://www.youtube.com/watch?v=kYZ8fNzQQMA&list=PLQVOkAHaXhnyB7iEpd_x8S3JMoA0ML5b9&index=1)

Episode 2: Initial

Response: [https://www.youtube.com/watch?v=gkp5FzOyQt4&list=PLQVOkAHaXhnyB7iEpd\\_x8S3JMoA0ML5b9&index=2](https://www.youtube.com/watch?v=gkp5FzOyQt4&list=PLQVOkAHaXhnyB7iEpd_x8S3JMoA0ML5b9&index=2)

Episode 3: Show

Ups: [https://www.youtube.com/watch?v=j7snvNgTCgc&list=PLQVOkAHaXhnyB7iEpd\\_x8S3JMoA0ML5b9&index=3](https://www.youtube.com/watch?v=j7snvNgTCgc&list=PLQVOkAHaXhnyB7iEpd_x8S3JMoA0ML5b9&index=3)

Episode 4: Photo

Arrays: [https://www.youtube.com/watch?v=fEcXcAvpHd8&list=PLQVOkAHaXhnyB7iEpd\\_x8S3JMoA0ML5b9&index=4](https://www.youtube.com/watch?v=fEcXcAvpHd8&list=PLQVOkAHaXhnyB7iEpd_x8S3JMoA0ML5b9&index=4)

Episode 5: Live

Lineups: [https://www.youtube.com/watch?v=2SsKJn5QQfs&list=PLQVOkAHaXhnyB7iEpd\\_x8S3JMoA0ML5b9&index=5](https://www.youtube.com/watch?v=2SsKJn5QQfs&list=PLQVOkAHaXhnyB7iEpd_x8S3JMoA0ML5b9&index=5)

### II. Additional Training Materials- <http://norwoodpolice.com/chieftrainingmaterials.html>

## Sample Eyewitness ID Compliance Survey

Name of Law Enforcement Agency:

Name of Officer Completing Survey:

Phone Number:

Email Address:

If your department has its own written eyewitness identification policy, please email a copy to XXX.

**Circle One**

<b>Did your department participate in training on eyewitness identification procedures?</b>	Yes	No
<b>Has your department adopted a written policy regarding eyewitness identification procedures?</b>	Yes	No
1. All lineups shall be conducted by a blind administrator, who does not know the identity of the suspect. If blind administration is not practicable, the folder shuffle method will be used, in which the administrator cannot see which photograph the witness is viewing.	Yes	No
2. Instructions to witnesses that the perpetrator may or may not be present in the identification procedure, and the investigation will continue whether or not an identification is made.	Yes	No
3. Non-suspect "fillers" used in lineups shall generally match the witness' description of the perpetrator in significant features.	Yes	No
4. If the witness makes an identification, the administrator shall document immediately after the identification is made, in the witness' own words, how confident he/she is that the individual identified is the perpetrator.	Yes	No